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In re Application of
Hong Jin et al
Application No. 09/161,122
Filed: September 25, 1998
Attorney Docket No. 7682-45

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:
: **OFFICE OF PETITIONS**
: **DECISION ON PETITION**
: **UNDER 37 CFR 1.78(a)(3)**
:

This is a decision on the petition under 37 CFR 1.78(a)(3), filed September 5, 2002, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of prior-filed nonprovisional Application No. 08/316,439, filed September 30, 1994, now Patent No. 5,840,520.

The petition is **DISMISSED**.

A petition under 37 CFR 1.78(a)(3) only applies where an applicant failed to comply with the provisions of 37 CFR 1.78(a)(2)(ii) within the time period provided for therein to add a reference to a prior-filed application in an application which was filed on or after November 29, 2000. In the instant case, since the subject application on which the CPA filed on December 15, 2000 is based was filed prior to November 29, 2000, the provisions of 37 CFR 1.78(a)(3) do not apply. 37 CFR 1.78(a)(2)(i), first sentence, specifically exempts CPA applications from the further provisions of the rule. The exact situation herein is further discussed on the USPTO web site, www.uspto.gov, on the AIPA web page, Questions and Answers, Section C, which pertains to 18 month publication, answer to question CX3.

However, petitioner may seek relief by way of a petition under 37 CFR 1.182 requesting entry of an amendment to the prior-filed application. 35 U.S.C. §120 permits entry of a subsequent amendment to an abandoned application in applications filed prior to November 29, 2000 to include the benefit of an earlier filing date for purposes other than prosecution. See Sampson v. Commissioner of Patents and Trademarks, 195 USPQ 136 (DC DC 1976).

In view of the above, the \$1,280 fee submitted for the petition under 37 CFR 1.78(a)(3) is unnecessary. Accordingly, petitioner may request a refund of the \$1,280 petition fee submitted by writing to the Office of Finance, Refund Section. A copy of this decision should accompany petitioner's request.

Any inquiries concerning this decision may be directed to Karen Creasy at (703) 305-8859.

This application is being forwarded to Technology Center Art Unit 1648 for processing the RCE filed September 5, 2002, and for appropriate consideration of the concurrently filed petition under Rule 1.48, amendment and drawings.



Frances Hicks

Lead Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy